



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/153226

PRELIMINARY RECITALS

Pursuant to a petition filed November 01, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on December 17, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$7,574.04 for the period of March 25, 2012 – December 31, 2012 and \$2,192.25 for the period of January 6, 2013 – June 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Attorney Joseph McCleer

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's employment during the relevant period of time is as follows:

| Employer | Start Date | End Date |
|-------------------------|------------|------------|
| Milwaukee [REDACTED] | 09/23/2011 | 03/24/2012 |
| [REDACTED] Services | 04/22/2012 | 04/29/2012 |
| [REDACTED] Services | 06/04/2012 | 09/01/2012 |
| Personalized [REDACTED] | 10/17/2012 | 11/17/2012 |
| [REDACTED] Clothing | 02/16/2013 | 06/05/2013 |

3. On September 23, 2011, Petitioner requested child care benefits. She reported that she was employed 18 hours/week and in school 16 hours/week. She was authorized for 20 hours/week of benefits for 2 school-aged children and 39 hours/week for one non-school aged child for the period of October 2, 2011 – March 31, 2012.
4. On April 13, 2012, the agency approved child care authorizations for the Petitioner for 13 hours/week for 2 school-aged children from April 1, 2012 – June 9, 2012 and 30 hours/week for June 10, 2012 – September 1, 2012. The agency also approved 30 hours/week for 1 non-school aged child for the period of April 1, 2012 – October 6, 2012.
5. On June 7, 2012, Petitioner called to report new employment with [REDACTED] Services. She also reported that her employment with Milwaukee [REDACTED] ended on March 28, 2012. On June 14, 2012, the agency approved child care authorizations for 45 hours/week for two school-aged children from June 3, 2012 – September 1, 2012 and 13 hours/week from September 2, 2012 – October 6, 2012. The agency also approved 45 hours/week for one non-school aged child from June 10, 2012 – October 6, 2012.
6. On September 14, 2012, the Petitioner submitted a renewal. She reported she was employed with [REDACTED] Services. On September 26, 2012, the agency approved child care authorizations for 16 hours/week for 2 school aged children from October 7, 2012 – April 6, 2013. The agency approved 45 hours/week for one non-school aged child from October 7, 2012 – April 6, 2013.
7. On January 10, 2013, the Petitioner contacted the agency to change the location of child care.
8. On February 18, 2013, the Petitioner reported her employment with [REDACTED] Clothing. On February 26, 2013, the Petitioner reported on her renewal that employment with Personalized [REDACTED] started on October 17, 2012 and ended on November 21, 2012. She also reported her employment with [REDACTED] ended on September 7, 2012.
9. On March 13, 2013, the Petitioner contacted the agency for updated child care authorizations. The agency noted Petitioner's reported wages for the 4th quarter of 2012 were \$636. It noted that she had child care authorizations. The agency created a referral for a possible overpayment.
10. On March 28, 2013, the Petitioner contacted the agency regarding a change in child care provider.
11. On May 14, 2013, the Petitioner contacted the agency to end child care authorizations.
12. On June 3, 2013, the Petitioner contacted the agency requesting child care authorizations. She reported working 20 hours/week. The agency approved 18 hours/week for three children for the period of June 9 – 15, 2013 and 25 hours/week for the period of June 16, 2013 – August 31, 2013.
13. On June 25, 2013, the Petitioner reported her last pay check from [REDACTED] was June 5, 2013.
14. On June 25, 2013, Petitioner was enrolled in the W-2 program.
15. The Petitioner was issued notices from the agency with regard to her child care eligibility and authorizations on April 23, 2012, June 4, 2012, June 18, 2012, August 27, 2012, September 27, 2012, October 1, 2012, October 29, 2012, January 14, 2013, March 18, 2013, and April 1, 2013. Each of the notices advised the Petitioner of the requirement to report any changes in her circumstances that could affect eligibility for authorizations within 10 days of the date the change

took place. The notices specifically indicated that any change in work hours or employment were to be reported within 10 days.

16. On October 22 and 23, 2013, the agency issued notices and worksheets of child care overpayments to the Petitioner informing her that the agency intends to recover overissuances of child care benefits in the amount of \$7,574.04 for the period of March 25, 2012 – December 31, 2012 and \$2,192.25 for the period of January 6, 2013 – June 30, 2013.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code §DCF 12.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code §DCF 12.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

In this case, the agency produced evidence to demonstrate that the Petitioner continued to utilize her child care authorizations during periods when she was not working or otherwise engaged in an approved activity. The Petitioner failed to report to the agency when her various jobs ended within 10 days as required. Because the agency was unaware of the periods of time when the Petitioner was not engaged in an approved activity, it continued to issue payments to the child care provider even though the Petitioner was not entitled to child care benefits. The Petitioner's failure to report and her action in continuing to utilize child care when she was not working or engaged in an approved activity resulted in the overissuance of benefits.

The Petitioner argued that the dates of employment used by the agency to determine periods of ineligibility were inaccurate. Specifically, the Petitioner noted that even though she did not work at Milwaukee [REDACTED] after March 25, 2012, she was not "released" from employment there until the end of the school year. She argued that she was employed with [REDACTED] Services through June, 2012 though she actually worked just one week, April 22 – 29, 2012. She also argued that she started employment with Personalized [REDACTED] in September, 2012 but conceded she did not start an actual job with that employer until October 17, 2012.

The Petitioner is missing the point with regard to eligibility for child care benefits. When she is not actually engaged in a work activity or other approved activity, she must report the change in hours or circumstance to the agency. If she is not actually engaged in work or other approved activity, she is able to care for her children and should not be utilizing child care. Therefore, it is not relevant that she was "employed" with [REDACTED] Services through June, 2012. What is relevant is that she only performed an

actual job assignment with that employer for the period of April 22 – 29, 2012. The same is true for the other employers for which the Petitioner made a similar argument.

The Petitioner testified that she did not intend to mislead the agency. For purposes of this overpayment hearing, intent is not relevant and I make no finding with regard to her intent. Based on the evidence, I conclude that the agency has demonstrated that Petitioner failed to report changes in her employment status as required and continued to utilize child care services when she was not engaged in an approved activity. I reviewed the agency's calculations with regard to the overpayment and find no errors in those calculations. Therefore, I find that the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$7,574.04 for the period of March 25, 2012 – December 31, 2012 and \$2,192.25 for the period of January 6, 2013 – June 30, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$7,574.04 for the period of March 25, 2012 – December 31, 2012 and \$2,192.25 for the period of January 6, 2013 – June 30, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

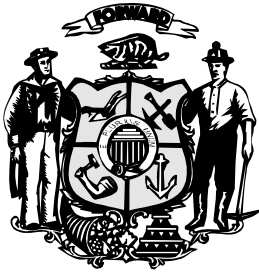
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 19, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Attorney Joseph McCleer